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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MINA DE ORO, LLC, a Nevada limited liability company; THE TOY CHEST, LLC, a Nevada limited liability company;

Case No.: 2:20-cv-00994-GMN-VCF

OPPOSITION TO DEFENDANT MATTHEW BRENT GOETTSCHE'S MOTION TO DISMISS

Plaintiffs,

V

MATTHEW BRENT GOETTSCHE, an individual, JOBEDIAH SINCLAIR WEEKS, an individual, JOSPEH FRANK ABEL, an individual, SILVIU CATALIN BALACI, an individual, BITCLUB, an unknown entity, and DOE and ROE corporations,

Defendants.

COMES NOW Plaintiffs, Mina De Oro, LLC and The Toy Chest, LLC, by and through their attorneys the Law Offices of P. Sterling Kerr, and hereby oppose Defendant Matthew Brent Goettsche's Motion to Dismiss.

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This Opposition is made and based upon all the papers and pleadings on file herein, the Points and Authorities attached hereto, and such oral argument as may be adduced at a hearing of this matter.

DATED this 6th day of April, 2021.

LAW OFFICES OF P. STERLING KERR

By: 181 Peter R. Pratt

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter involves Defendants who have faced or are currently facing major criminal charges regarding cryptocurrency and crypto-mining schemes. Plaintiffs have alleged violations of various federal and state securities statutes, as well as claims. Defendants induced Plaintiffs to invest \$500,000 with Defendants and have deprived Plaintiffs of the use of the funds or the profits from the funds, as Defendants diverted the money to personal use.

Defendants eventually shut down their website and refused to return the funds to Plaintiffs. Plaintiffs had zero access to the contracts, as the contracts were all online, and no ability to exercise any contract provisions, including mediation and arbitration provisions set forth in the Motion to Dismiss, which Plaintiffs had no access to even view.

Since the filing of the Motion to Dismiss, counsel for Plaintiffs has reached out to counsel for Goetsche regarding staying proceedings to conduct mediation, but Goetsche has been unwilling to do so.

Defendant's Motion is based upon two primary points: 1, a lack of personal jurisdiction over

1 Defendant Goetsche and 2, a failure to engage in binding dispute resolution. Defendant
 2 Goetsche additionally moves, in the alternative, for a stay pending the resolution of a related
 3 criminal case in New Jersey.

4 **II. JURISDICTION IS PROPER**

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 6 The Court must deny Goetsche's Motion to Dismiss as the Court has sufficient contacts
 7 with Nevada to have specific personal jurisdiction over these claims, venue is proper, and the
 8 claims have been properly pled as to fulfill the requirements of FRCP 8(a)(2).¹

9 Goetsche repeatedly makes false statements in his Motion that he "did not perform any
 10 of the alleged acts in, direct his conduct to, or target the State of Nevada." *See* Motion to
 11 Dismiss at p. 2, 4, 5. Plaintiffs specified in the Complaint that the tortious acts in question were
 12 posted on the internet, and that the tortious statements were directed toward the Plaintiffs, which
 13 are Nevada entities. Defendants made no effort to exclude Nevada from its prospective
 14 customers, and instead purposefully did not exclude Nevada.

15 The Complaint clearly sets forth the basis for Nevada jurisdiction. While Goetsche
 16 attempts to minimize this, there is sufficient basis to hold that Goetsche and his co-defendants
 17 purposefully availed themselves of Nevada and rejected the opportunity to exclude Nevada from
 18 its pool of prospective customers. It is entirely reasonable to hold that Nevada has jurisdiction in
 19 this matter.

20 **III. ANALYSIS**

21 **A. MOTION TO DISMISS STANDARD**

22 "A Rule 12(b)(6) motion tests the legal sufficiency of a claim. A claim may be dismissed
 23 only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim
 24 which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d
 25 80 (1957); Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 338 (9th Cir.1996).

26 According to FRCP 12(b)(6) a court may dismiss a complaint for "failure to state a claim
 27

28 ¹ Plaintiffs do not dispute that this Court does not have general jurisdiction over Defendant Gottsche.

1 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must
 2 provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief."
 3 FRCP 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not
 4 require detailed factual allegations, it demands more than "labels and conclusions or a formulaic
 5 recitation of the elements of a cause of action. . ." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
 6 (citation omitted) (internal quotations omitted). "Factual allegations must be enough to rise
 7 above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a
 8 complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its
 9 face." *Iqbal*, 556 U.S. at 678 (citation omitted).

10 In *Iqbal*, the Supreme Court clarified the two-step approach to apply when considering
 11 motions to dismiss. First, the court must accept as true all well-pled factual allegations in the
 12 complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* Mere
 13 recitals of the elements of a cause of action, supported only by conclusory statements, do not
 14 suffice. *Id.* Second, the court must consider whether the factual allegations in the complaint
 15 allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's
 16 complaint alleges facts that allow the court to draw a reasonable inference that the defendant is
 17 liable for the alleged misconduct. *Id.* at 678.

18 Where the complaint permits the court to infer more than the mere possibility of misconduct, the
 19 complaint has "alleged - but not shown - that the pleader is entitled to relief." *Id.* at 679 (internal
 20 quotations omitted). When the allegations in a complaint have crossed the line from conceivable
 21 to plausible, plaintiff's claim must survive. *See Twombly*, 550 U.S. at 570.

22 A federal court must apply the substantive law of the forum state when a federal question
 23 is not involved. *See Cornett v. Gawker media, LLC*, 2014 WL 2863093, at 5 (D. Nev. June 23,
 24 2014); see also *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78-80, 58 S.Ct. 817, 82 L.Ed.1188
 25 (1938). Likewise, when "federal subject matter jurisdiction is based on diversity, courts apply the
 26 law of the forum state to determine which state's statute of limitations to apply." *Id.* (citing to
 27 *Guaranty Trust Co. v. York*, 326 U.S. 99, 110 (1945); see also *Flowers v. Carville*, 310 F.3d
 28 1118, 1123 (9th Cir. 2002)). As such Nevada substantive law applies here. See also First

1 American Defendant's Motion to Dismiss pg. 10.

2 As to the request to dismiss pursuant to FRCP 12(b)(2) for lack of personal jurisdiction,
 3 "At the motion to dismiss stage, a plaintiff is generally required only to make out a *prima facie*
 4 showing of personal jurisdiction to overcome a 12(b)(2) motion." See *Glencore Grain Rotterdam*
 5 *B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1119 (9th Cir.2002).

6 **B. THE DISTRICT COURT OF NEVADA HAS SPECIFIC PERSONAL**
 7 **JURISDICTION OVER THE CLAIMS MADE AGAINST GOETTSCHE IN**
THIS CASE

8 This Court has specific personal jurisdiction over the claims alleged in the Complaint
 9 pursuant to the Nevada long arm statute, and the recent federal case law outlining the
 10 requirements of personal jurisdiction regarding allegations of tortious activity by a defendant on
 11 the internet. As stated in Goettsche's Motion, "Where, as here, no federal statute authorizes
 12 personal jurisdiction, the district court applies the law of the state in which the court sits.
 13 Fed.R.Civ.P. 4(k)(1)(A); *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir.1998)."
 14 *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F. 3d 1218 - Court of Appeals, 9th Circuit
 15 2011. The federal court has analyzed the Nevada statute, "Nevada's long-arm statute permits the
 16 exercise of jurisdiction to the same extent as the Constitution. Nev.Rev.Stat. § 14.065 (2001).
 17 Hence, we consider only the constitutional principles of due process which require that RII have
 18 minimum contacts with Nevada 'such that the maintenance of the suit does not offend traditional
 19 notions of fair play and substantial justice.' *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66
 20 S.Ct. 154, 90 L.Ed. 95 (1945)."

21 *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F. 3d 1007 - Court of Appeals, 9th Circuit 2002.

22 The Ninth Circuit uses an analysis of three elements to determine whether personal
 23 jurisdiction over a defendant exists, "(1) The non-resident defendant must *purposefully direct his*
 24 *activities* or consummate some transaction with the forum or resident thereof; *or* perform some
 25 act by which he *purposefully avails himself* of the privilege of conducting activities in the forum,
 26 thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises
 27 out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction
 28 must comport with fair play and substantial justice, i.e. it must be reasonable.

1 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th

2 *Cir.1987*) (emphases added)).” *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F. 3d 1218 -

3 Court of Appeals, 9th Circuit 2011.

4 The *Mavrix* case goes on to discuss the first factor in the context of a tort case like this
 5 one. “The ‘effects’ test, which is based on the Supreme Court’s decision in *Calder v. Jones*, 465
 6 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), requires that ‘the defendant allegedly must
 7 have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm
 8 that the defendant knows is likely to be suffered in the forum state.’ *Brayton Purcell*, 606 F.3d at
 9 1128 (quoting *Yahoo!*, 433 F.3d at 1206).” *Id.* at 1228.

10 The *Mavrix* case is important to discuss in this situation because there is an analysis of
 11 personal jurisdiction in the context of website and internet activity. The *Mavrix* court continues
 12 by stating that the acts must be ““expressly aimed at the forum state.” In prior cases, we have
 13 struggled with the question whether tortious conduct on a nationally accessible website is
 14 expressly aimed at any, or all, of the forums in which the website can be viewed. See, e.g.,
 15 *Brayton Purcell*, 606 F.3d at 1129-31; *Pebble Beach*, 453 F.3d at 1156-58; *Rio Props., Inc. v. Rio*
 16 *Int'l Interlink*, 284 F.3d 1007, 1019-21 (9th Cir.2002); *Panavision Int'l, L.P. v. Toeppen*, 141
 17 F.3d 1316, 1321-22 (9th Cir.1998); *Cybersell*, 130 F.3d at 417. On the one hand, we have made
 18 clear that "maintenance of a passive website alone cannot satisfy the express aiming prong."
 19 *Brayton Purcell*, 606 F.3d at 1129. On the other, we have held that "operating even a passive
 20 website in conjunction with `something more' — conduct directly targeting the forum — is
 21 sufficient." *Rio Props.*, 284 F.3d at 1020. In determining whether a nonresident defendant has
 22 done "something more," we have considered several factors, including the interactivity of the
 23 defendant's website, e.g., *Pebble Beach*, 453 F.3d at 1153-54, 1158; *Cybersell*, 130 F.3d at 417-
 24 20; the geographic scope of the defendant's commercial ambitions, e.g., *Pebble Beach*, 453 F.3d
 25 at 1156-58; *Rio Props.*, 284 F.3d at 1020-21; and whether the defendant "individually targeted" a
 26 plaintiff known to be a forum resident, e.g., *Brayton Purcell*, 606 F.3d at 1129; *Pebble Beach*,
 27 453 F.3d at 1156-57; *Panavision*, 141 F.3d at 1321-22.

28 Here, we are not talking about merely operating a website and nominal interaction.

1 Instead, this matter relates to an investment of a half million dollars, wherein the Defendants,
 2 including Goetsche, made significant misrepresentations and engaged in violations of both state
 3 and federal law and are facing or have faced criminal charges related to the violations and frauds.
 4 Contrary to the arguments set forth by Goetsche, the prior case law in both *Schwarzegger* and
 5 *Freestream Aircraft* (cited by Goetsche) would hold it to be reasonable to adjudicate this dispute
 6 in Nevada, where the Plaintiffs are domiciled and where Defendants, including Goetsche,
 7 purposefully availed themselves of the use of the forum for the purpose of violating securities
 8 law and harming Plaintiffs.

9 C. LEAVE TO AMEND SHOULD BE GRANTED IN ORDER TO AMEND
 10 PERCEIVED DEFICIENCIES IN THE AMENDED COMPLAINT

11 FRCP 15(a) directs that leave shall be freely given to amend a pleading when justice so
 12 requires. Insofar as this Court finds the cause of action in Plaintiffs' Complaint to be improperly
 13 pled, Plaintiffs requests leave of this Court to amend the Complaint accordingly.

14 D. BINDING PREDISPENSE RESOLUTION PROVISIONS DO NOT REQUIRE
 15 DISMISSAL

16 Plaintiffs had no access to the contract prior to filing the lawsuit. Defendants had
 17 maintained the contracts on their website and had shut down the website and denied Plaintiffs
 18 any access to the contract or its provisions. As such, Defendants breached the contract at the
 19 time they shut down the website. Instead of approaching Plaintiffs and other investors to
 20 mediate a termination of the contract, Defendants refused contact and refused to mediate the
 21 matter.

22 Additionally, since the filing of this Motion, Plaintiffs have reached out about mediating
 23 this matter and staying the matter pending mediation. However, Goetsche has refused to even
 24 consider doing so. As such, it appears that the request for enforcement of the mediation clause is
 25 mere deception. Goetsche has no desire to mediate any claims against him. Moreover, while
 26 Goetsche was a member of Defendant Bitclub, Bitclub is not here requesting for enforcement of
 27 the mediation clause. Plaintiffs have claims against Goetsche personally. The contract does not
 28 limit Plaintiffs from seeking damages from Goetsche individually and does not protect

1 Goettsche individually. If Goettsche individually engaged in fraudulent actions, if Goettsche
 2 was unjustly enriched by taking the Plaintiffs' money and converting to his personal use, if
 3 Goettsche fraudulently induced Plaintiffs into investing in Bitclub, then Plaintiffs can separately
 4 proceed in their action against Goettsche.

5 If Bitclub, which has been defaulted in this matter, wishes to come to this court and seek
 6 to enforce the mediation clause, it is free to do so. If Goettsche is representing that Bitclub as his
 7 alter ego and he can exert all the rights and privileges of Bitclub (which he has not done
 8 heretofore), such as enforcement of a mediation clause, then he also would be responsible for all
 9 the acts of Bitclub, both criminally and civilly, a position that his criminal defense attorneys in
 10 New Jersey might object to at this time.

11 As such, the Bitclub mediation and arbitration provisions are not applicable to a dispute
 12 between Plaintiffs and Goettsche. As such, this Court should deny the Motion to Dismiss on this
 13 basis.

14 E. THE CASE SHOULD NOT BE STAYED PENDING THE CRIMINAL CASE

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 16 The request, in the alternative, to stay the litigation pending the criminal matter, would, in
 17 effect, deny Plaintiffs of justice. To support his argument, Goettsche cites *Keating v. Office of*
18 Trust Supervision, 45 F.3d 322 (9th Cir. 1995). This case involved notorious savings and loan
 19 fraudster Charles Keating, whose illegal activities led to severe political consequences. The
 20 court there set forth a six-factor test to determine whether a civil proceeding should be allowed to
 21 go forward while a criminal case was pending. Contrary to the argument of Goettsche, these
 22 factors do not weigh in his favor.

23 This matter involves an investment by Plaintiffs with Defendants of \$500,000. Plaintiffs
 24 have been without their funds for years, while Defendants, including Goettsche, have taken full
 25 advantage of the money for their personal use and enjoyment, along with the money of many
 26 other investors. It is extremely important and proper that this matter proceed so that Plaintiffs
 27 can be compensated as soon as possible. Many other third parties have been impacted by the
 28 misdeeds of the Defendants and so there is general interest in this matter proceeding. Goettsche,

1 while claiming difficulty affording to defend both the civil and criminal matter at the same time,
2 nonetheless has multiple law firms on this matter and appears more than able to fund an ample
3 defense of the litigation, both here and elsewhere.

4 Wherefore, this Court should not stay this litigation pending the outcome of the New
5 Jersey criminal case.

6 **III. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully requests that the Court deny Goettsche's
8 Motion to Dismiss in its entirety as it is without merit. In the alternative, Plaintiffs request leave
9 of the Court to amend its complaint if the Court finds it deficient in any way.

10 DATED this 6th day of April, 2021.

11 LAW OFFICES OF P. STERLING KERR

12 By: /s/ Peter R. Pratt

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on April 6, 2021, a true and correct copy of **OPPOSITION TO DEFENDANT MATTHEW BRENT GOETTSCHE'S MOTION TO DISMISS** was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

BY E-MAIL AND/OR ELECTRONIC MEANS: addressees (s) having consented to electronic service, I via e-mail, Electronic Service through the Court's electronic filing system, or other electronic means to the e-mail address(es) of the addressee(s).

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